

Before the
Federal Communications Commission

Washington, D.C. 20554

In the Matter of:)
)
Revision of the Commission's Rules to) CC Docket No. 94-102
Ensure Compatibility with Enhanced 911)
Emergency Calling Systems) DA 01-886

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF QWEST WIRELESS, LLC

Qwest Wireless LLC ("Qwest Wireless")¹ hereby responds to the Wireless Telecommunications Bureau's Public Notice of April 5, 2001, seeking public comment on the "Petition for Clarification and/or Declaratory Ruling" (the "Petition") of the City of Richardson, Texas (the "City").² Qwest Wireless opposes the Petition, and the Bureau should expeditiously deny it to ensure that carriers, vendors, and PSAPs themselves may proceed with Phase II deployment with certainty as to their respective obligations and responsibilities. The City's "interpretation" is without support in the Commission's rules or underlying decisions and is tantamount to a rule change. As such, the Bureau has no authority to grant the Petition and should deny the City's request as an untimely petition for reconsideration.

¹ Qwest Wireless, LLC, together with TW Wireless, LLC, a joint venture in which Qwest Wireless holds a majority equity and sole controlling ownership interest, provides broadband PCS services in a number of markets.

² City of Richardson, Texas, Petition for Clarification and/or Declaratory Ruling, CC Docket No. 94-102, filed Apr. 4, 2001 ("Richardson Petition"); Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Request for Clarification or Declaratory Ruling Concerning Public Safety Answering Point Requests for Phase II Enhanced 911*, CC Docket No. 94-102, DA 01-886 (rel. Apr. 5, 2001), 66 Fed. Reg. 19781 (Apr. 17, 2001).

I. THE CITY'S "INTERPRETATION" OF SECTION 20.18(j) IS INCONSISTENT WITH THE RULES AND COMMISSION INTENT AND IS TANTAMOUNT TO A RULE CHANGE

The City claims that a PSAP request is "valid" for purposes of triggering a carrier's E-911 obligations when the PSAP merely "*inform[s]*" the carrier that its equipment upgrades for Phase II service *will be finalized* prior to delivery of the service by the carrier and that it has an adequate cost recovery mechanism in place to bring its equipment to the level necessary to receive Phase II data"³ This interpretation of the rules is flatly inconsistent with Section 20.18(j), which provides that:

The requirements set forth in paragraphs (d) through (h) of this section [20.18] shall be applicable *only if* the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and *is capable* of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service *is in place*.⁴

The term "is capable" requires that, in order for the Phase I and II deployment requirements and deadlines to apply to a carrier, the PSAP must have the necessary capability *at the time the request is submitted* -- not, as the City contends, at some time in the future.

Moreover, and contrary to the City's assertion that the Commission has not addressed the subject matter of the Petition, the Commission has consistently held that a PSAP must be Phase I- or Phase II-capable (as applicable) for its request to trigger a carrier's E-911 obligations.⁵

³ Richardson Petition at 1, 6.

⁴ 47 C.F.R. § 20.18(j) (emphasis supplied).

⁵ Richardson Petition at 4 ("the Commission did not specifically address whether a PSAP request is valid when a PSAP represents to a wireless carrier that it will have its equipment upgrades finalized by the time Phase II service is delivered to the PSAP"). In fact, the excerpt cited in the Petition contravenes the City's assertion. *See id.* (quoting 14 FCC Rcd. at 20853, in which the Commission stated that "the carrier's E911 service obligation is triggered when the carrier receives a valid request from a PSAP *that is capable* of receiving and utilizing the data elements associated with the service . . .").

Indeed, the original basis for the rule was the position taken by three different public safety organizations jointly with CTIA.⁶ In the original *Report and Order*, the Commission thus stated:

[T]he requirements imposed upon carriers by our actions in establishing the schedule shall apply *only if* a carrier receives a request for E911 service from the administrator of a PSAP that *has made the investment* which is necessary to allow it to receive and utilize the data elements associated with the service.⁷

The Commission affirmed this interpretation when it modified the cost recovery prerequisites in the *Second Memorandum Opinion and Order*, providing that "[c]arriers cannot fulfill their obligations . . . unless and until the States' 911 systems are capable of receiving and utilizing the E911 information so that PSAPs can make a *valid request* for the service."⁸

Section 20.18(j) serves the important policy objective of ensuring that carriers "benefit from receiving requests from PSAPs that are ready to receive the carriers' transmissions, thereby avoiding unnecessary expenditures or investments in their networks."⁹ The Commission expressly found that:

Carriers should not be forced to make investments in their networks to provide E911 services that cannot be used by the PSAP. Apart from the significant costs involved, because location technologies are evolving and improving in the short term and the costs of those technologies are decreasing, the public, the PSAP and

⁶ See *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 18676, 18709 ¶ 64 (1996) ("*Report and Order*"). The Commission cited to a joint filing of CTIA, NENA, APCO and NASNA in which the parties state that they "recognized that a precondition to a CMRS carrier's obligation to provide enhanced 911 service, was a *bona fide* request by a Public Safety Answering Point ("PSAP") willing *and able* to take advantage of such wireless compatibility. No carrier should be expected to provide basic or enhanced 911 service if the new services are not wanted *or cannot be used*." Joint Reply Comments of CTIA, NENA, APCO and NASNA in CC Docket No. 94-102, March 11, 1996, at 4-5 (emphasis supplied).

⁷ *Report and Order*, 11 FCC Rcd. at 18709 (emphasis supplied).

⁸ *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Second Memorandum Opinion and Order* at 14 FCC Rcd. 20850, 20878 ¶ 67 (emphasis supplied). The Commission also described the *Report and Order* "originally conditioning the carrier's obligation on the receipt of a request from a PSAP *with the capability to receive and utilize the information*." *Id.* at 20877-78 ¶ 66 (emphasis supplied).

⁹ *Id.* at 20909.

the carrier benefit from a requirement that is not triggered until the actual time at which the PSAP can take advantage of the E911 service.¹⁰

The City, however, does not acknowledge this policy objective and, indeed, would undermine it by effectively forcing a carrier to incur significant expenses deploying E-911 service at the risk that the PSAP will be unable to timely upgrade its facilities.

The PSAP's task of upgrading its facilities is not the mere formality that the City implies. The Commission has noted, and APCO has advised its members, that the costs of upgrading PSAP facilities and the 911 network to accommodate E-911 compatibility may be significant.¹¹ PSAPs' E-911 deployment is also subject to factors beyond a carrier's control, such as state or local funding availability, the delays associated with state and local government legislative and regulatory processes, and availability of facilities from the local exchange carrier. The Commission made expressly clear that PSAPs bear a significant burden in order to trigger carriers' E-911 obligations. Under the City's interpretation, however, a PSAP would have to expend nothing in order to trigger a carrier's regulatory obligations and would have far less incentive to timely upgrade its own facilities. The City's interpretation thus does not "adequately encourage PSAPs to take the necessary steps to upgrade their own facilities"¹² and directly contravenes the Commission's instructions that PSAPs "must notify the covered carrier that they *are capable* of receiving and utilizing the data elements associated with the service and request the service."¹³

¹⁰ *Id.* at ¶ 69; *see also Third Report and Order*, 14 FCC Rcd. 17388, ¶ 53 (1999) (for Phase II handset-based solutions, "[w]here a PSAP request is delayed beyond December 31, 2002, the carrier will have additional time to comply").

¹¹ *Third Report and Order* at ¶ 48.

¹² *Id.* at ¶ 46.

¹³ *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Memorandum Opinion and Order*, 12 FCC Rcd. 22665, 22755 (1997).

The rules do not enable carriers to "sit and do nothing" prior to the PSAP becoming Phase I- or Phase II-capable.¹⁴ Once a valid PSAP request is submitted, carriers have only a limited period of time (6 months, subject to waiver), to deploy the service. As a practical matter, however, the entire E-911 deployment process can often times take well over the six-month period, and therefore there is no incentive for carriers to delay E-911 deployment. In fact, consistent with VoiceStream's response to the City, most wireless carriers, including Qwest Wireless, *already* consider an initial letter request for Phase I or Phase II as a request to begin negotiations and the exchange of information with PSAPs. Thus, there is already considerable carrier-PSAP interaction, as well as E-911 deployment, in advance of a valid PSAP request.

II. THE PETITION IS PROCEDURALLY DEFECTIVE

Section 1.2 of the rules authorizes the Commission (consistent with the Administrative Procedure Act) to "issue a declaratory ruling terminating a controversy or removing uncertainty."¹⁵ The Commission's rules and decisions, however, are not ambiguous with respect to the issue raised in the Petition. The City has misconstrued the Commission's rules and orders in an effort to *create* controversy and uncertainty when, in reality, none exists. The City is requesting a substantive change in the rules that, if adopted, would undermine long-standing carrier expectations and a carefully-crafted balance between public safety agencies' and carriers' interests and responsibilities. The Commission has previously recognized that petitions for

¹⁴ See Richardson Petition at 2 and 5.

¹⁵ 47 C.F.R. § 1.2.

rulemaking cast as petitions for declaratory ruling should be rejected, and the City's Petition is no exception.¹⁶

If the City wanted its position to be considered as the substantive regulatory obligation, it should have instead filed a timely petition for reconsideration or, in the alternative, a petition for rulemaking.¹⁷ In any event, the Commission has not delegated to the Bureau authority to grant the City's request, which would require amendment of the Commission's rules.¹⁸ Carriers and PSAPs alike have had ample notice of Section 20.18(j)'s applicability, and the Bureau should expeditiously deny the Petition to ensure that carriers have the certainty necessary to plan their E-911 deployment activities efficiently and to target PSAPs that have substantively demonstrated the highest commitment to E-911 deployment.

¹⁶ See *GVNW Inc., Order*, 11 FCC Rcd. 13915, ¶ 10 (1996); *Competition in the Interstate Interexchange Marketplace, Petitions for Modification of Fresh Look Policy, Memorandum Opinion and Order*, 8 FCC Rcd. 5046, ¶ 20 (1993).

¹⁷ See *Public Service Commission of Maryland, Memorandum Opinion and Order*, 4 FCC Rcd. 4000, ¶ 30 (1989).

¹⁸ 47 C.F.R. § 0.331(d) (Bureau has no authority to "act on . . . final orders in rulemaking proceedings and inquiry proceedings").

CONCLUSION

The Bureau should deny the Petition as (1) contrary to the Commission's rules and precedent, and (2) procedurally defective.

Respectfully submitted,

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